

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND MANAGEMENT
BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, et al.,

Debtors.¹

PROMESA
Title III

No. 17 BK 3283-LTS

(Jointly Administered)

**OBJECTION OF AMBAC ASSURANCE CORPORATION, NATIONAL PUBLIC FINANCE
GUARANTEE CORPORATION, ASSURED GUARANTY CORP., ASSURED GUARANTY
MUNICIPAL CORP., AND FINANCIAL GUARANTY INSURANCE COMPANY TO THE
URGENT JOINT MOTION FOR EXPEDITED CONSIDERATION OF URGENT JOINT
MOTION FOR ENTRY OF ORDER APPROVING STIPULATION AND AGREED ORDER
BY AND AMONG FINANCIAL OVERSIGHT AND MANAGEMENT BOARD, ITS
SPECIAL CLAIMS COMMITTEE, AND OFFICIAL COMMITTEE OF UNSECURED
CREDITORS RELATED TO JOINT PROSECUTION OF CERTAIN CAUSES OF ACTION
OF PUERTO RICO HIGHWAYS AND TRANSPORTATION AUTHORITY AND
EMPLOYEES RETIREMENT SYSTEM OF THE GOVERNMENT OF THE
COMMONWEALTH OF PUERTO RICO**

Ambac Assurance Corporation, National Public Finance Guarantee Corporation,
Assured Guaranty Corp., Assured Guaranty Municipal Corp., and Financial Guaranty Insurance
Company (together, the “Respondents”) hereby submit this objection to the *Urgent Joint Motion
For Expedited Consideration of Urgent Joint Motion For Entry Of Order Approving Stipulation
And Agreed Order By And Among Financial Oversight And Management Board, Its Special*

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (the “Commonwealth”) (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747).

Claims Committee, And Official Committee Of Unsecured Creditors Related To Joint Prosecution Of Certain Causes Of Action of Puerto Rico Highways and Transportation Authority and Employees Retirement System of the Government of the Commonwealth of Puerto Rico [ECF No. 6868] (the “Motion to Expedite”), and respectfully state as follows:

RESPONSE

1. On May 21, 2017, the Oversight Board filed a Title III petition for Puerto Rico Highways and Transportation Authority (“HTA”). Thus began the running of the two-year statute of limitations under sections 108(a) and 546(a) of the Bankruptcy Code for the Oversight Board, or a Court-appointed trustee, to bring avoidance claims on behalf of HTA. This fact was known to the Oversight Board from the time of filing and to the Official Committee of Unsecured Creditors (the “Committee”) upon its formation in August 2017.

2. Despite being aware of the impending deadline for commencing avoidance claims for almost two years, the Oversight Board and the Committee waited until after 2 p.m. today to file a joint motion and proposed stipulation regarding the joint prosecution of avoidance claims on behalf of HTA (and ERS) (the “Motion”). The Oversight Board and the Committee ask this Court to consider the motion on an emergency expedited basis. Respondents object to the Motion to Expedite.²

3. There is no emergency that requires consideration of the Motion at a hearing on May 16, 2019, a mere eight days from now, and responses over this coming weekend. Respondents note that the briefing schedule proposed by the Court establishes Sunday, May 12, 2019 as the objection deadline, which is Mother’s Day. The parties should be provided sufficient time to obtain and evaluate potentially relevant information, and fully brief the issues for the Court.

² Respondents object to the underlying motion as well, and will file appropriate objections within the deadlines established by the Court.

The Motion to Expedite should be denied and the Motion should be considered in due course at the June omnibus hearing.

4. The emergency Motion to Expedite is particularly concerning as it relates to HTA claims. These claims have been discussed multiple times in recent weeks, and each time Respondents clearly stated their objection both to the Committee being appointed as trustee in connection to such claims, and to any such request by the Committee being brought on an abbreviated schedule.

5. At the April 18 hearing regarding the stipulation addressing the joint prosecution of certain Commonwealth avoidance actions, Respondents expressly (and repeatedly) noted their objection to the Committee participating in the prosecution of HTA claims. In response to Ambac's objection and expressed concern about being forced to brief the substantive issue on an emergency basis, the Court admonished the Committee's counsel to ensure that any similar HTA-related motion and stipulation be brought with ample notice and time for consideration. *See Hr'g. Tr.* at 60:12-16.

6. Respondents believe that there are significant conflicts of interest, among other things, that preclude the Committee from being appointed a trustee to prosecute HTA actions. Respondents have asked for, but have still not received, critical information that would allow them to evaluate such claims. For example, the Committee filed an updated Rule 2019 Statement under an hour ago and has yet to identify the specific avoidance actions that it intends to pursue. Respondents were unable to analyze the Committee members' holdings before filing this objection. Respondents must be allowed to obtain and consider relevant information, which is unlikely to all happen in eight days. As Respondents have said before—and reiterate now—with each occurrence of the Oversight Board filing a substantive motion on a moment's notice, creditors

and interested parties are hard pressed to meaningfully evaluate what is being presented to the Court.

7. The motion to expedite should also be denied because there is no emergency that requires expedited consideration of the proposed stipulation. On April 29, 2019 the White House issued a press release announcing its intent to nominate the current members of the Oversight Board to fill out the remainder of their term. *See* Dkt. No. 6695 (FOMB Motion to Inform). On May 6, the First Circuit extended **until July 15** the stay of the issuance of the mandate in the Appointments Clause litigation. According to the Committee and the Oversight Board, the joint prosecution is necessary to address the “Aurelius Problem,” *i.e.* the possibility that the Oversight Board is rendered without authority to act. In light of the First Circuit extension of the stay of the mandate, and President Trump’s publicly stated intention to nominate the current members of the Oversight Board for confirmation by the Senate, there is no emergency that has to be heard on May 16.

8. For all of the forgoing reasons, the Motion to Expedite should be denied and the Motion should be considered in the ordinary course at the June omnibus hearing. This would allow sufficient time for the exchange of relevant information, full briefing and careful consideration of the issues. It would also allow the Motion to be decided well in advance of the current July 15 deadline for the issuance of the mandate by the First Circuit in the *Aurelius* litigation. Movants would suffer no prejudice.

9. There is simply no reason why this Motion has to be considered and decided on an artificially compressed timeframe.

Dated: May 8, 2019
San Juan, Puerto Rico

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CERTIFICATE OF SERVICE

I hereby certify that, on this same date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notifications of such filing to all CM/ECF participants in this case.

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